
HOUSE BILL No. 1791

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-7-1; IC 7.1-2-3-33; IC 7.1-6.

Synopsis: Internet cigarette sales. Provides that the state may bring suit against a person for violating the federal Jenkins Act. Requires a person who sells cigarettes by mail, telephone, or Internet order to notify the buyer that the buyer is responsible for unpaid state cigarette taxes. Provides a civil penalty for failure to notify a buyer that the buyer is responsible for unpaid cigarette taxes. Prohibits the sale of cigarettes or tobacco products to a person less than 18 years of age. Requires a person who sells cigarettes or tobacco products by mail, telephone, or Internet order to verify the buyer's name, address, and date of birth. Provides a civil penalty for: (1) failing to verify the buyer's name, address, or date of birth; or (2) selling cigarettes or tobacco products to a person less than 18 years of age.

Effective: July 1, 2003.

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January 21, 2003, read first time and referred to Committee on Technology, Research and Development.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1791

A BILL FOR AN ACT to amend the Indiana Code concerning alcoholic beverages and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-7-1-24.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]: **Sec. 24.5. (a) For purposes of this section, "face to face**
4 **sale" means a sale in which the consumer is in the physical**
5 **presence of the seller at the time of the sale. The term does not**
6 **include a transaction conducted:**

- 7 **(1) through the mail;**
8 **(2) on the Internet;**
9 **(3) on the telephone; or**
10 **(4) by any other method;**

11 **in which the consumer is not in the physical presence of the seller**
12 **at the time of the sale.**

13 **(b) Except as provided in subsection (c), a sale of tobacco**
14 **products must be a face to face sale.**

15 **(c) A person may engage in a sale of cigarettes that is not a face**
16 **to face sale if:**

- 17 **(1) all applicable taxes under this chapter have been paid; or**



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(2) the seller places a legible and conspicuous notice on the outside of the container in which the cigarettes are shipped. The notice shall be placed on the same side of the container as the address to which the container is shipped and shall state the following:

"If these cigarettes have been shipped to you from a seller located outside the state in which you reside, the seller has reported under federal law information about the sale of these cigarettes, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these cigarettes."

(d) The department may bring suit to enforce this section. If a court enters a judgment for a violation of this section, the court shall impose, in addition to any other remedies, a civil penalty as follows:

(1) If a defendant has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000).

(2) If a defendant has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500).

(3) If a defendant has three (3) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000).

(4) If a defendant has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500).

(5) If a defendant has five (5) or more unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000).

SECTION 2. IC 6-7-1-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 35. (a) It ~~shall be~~ is unlawful to procure or induce the evasion of any tax imposed by this chapter. It ~~shall be~~ is unlawful for any person to advertise, print, publish, or circulate through or by use of any medium of communication any advertisement or offer to sell cigarettes within or into the state of

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Indiana in which it is stated or implied that any taxes provided for in this chapter will not or need not be paid.

(b) The attorney general may bring an action on behalf of the state against a person for failing to comply with the Jenkins Act (15 U.S.C. 375 through 15 U.S.C. 378). If the state prevails in such an action, the court shall award fees and costs, including attorney's fees, to the state in addition to any other awards or penalties allowed.

SECTION 3. IC 7.1-2-3-33, AS ADDED BY P.L.177-1999, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 33. The commission is authorized to:

- (1) investigate a violation of; and
- (2) enforce a penalty for a violation of;

IC 7.1-6-3; IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.3, IC 35-46-1-11.5, or IC 35-46-1-11.7.

SECTION 4. IC 7.1-6-1-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 1.5. "Face to face sale" has the meaning set forth in IC 6-7-1-24.5(a).**

SECTION 5. IC 7.1-6-3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 3. Tobacco Product Sales Verification

Sec. 1. A person may not sell or otherwise distribute tobacco products to a person less than eighteen (18) years of age.

Sec. 2. A person who sells or otherwise distributes tobacco products in a transaction other than in a face to face sale shall do the following:

- (1) Require a purchaser to provide the purchaser's name, address, telephone number, and date of birth.**
- (2) Verify that the purchaser is at least eighteen (18) years of age by attempting to match the name, address, and date of birth provided by the purchaser to information contained in records in a data base of individuals whose age has been verified to be eighteen (18) years of age or older by reference to an appropriate data base of government records kept by the seller or distributor or any other entity. If the seller or distributor is unable to verify that the purchaser is at least eighteen (18) years of age, the seller or distributor shall require the purchaser to:**

- (A) sign an attestation that the purchaser is at least eighteen (18) years of age; and**



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(B) provide a copy of a photographic identification card issued under IC 9-24-16-1 or a similar card issued under the laws of another state or the federal government.

(3) Require payment for the transaction by a credit card or debit card that is:

(A) issued in the name provided by the purchaser; and

(B) billed to the address provided by the purchaser.

(4) Before shipping or otherwise delivering the tobacco products to the purchaser, place a telephone call after 5 p.m. to the purchaser confirming the purchase. The telephone call may be a person to person call or a recorded message. The seller or distributor is not required to speak directly with the purchaser and may leave a message with another person or on an answering machine or voice mail.

(5) Ship or otherwise deliver the tobacco products to the address provided by the purchaser and verified under subdivision (2).

Sec. 3. A person who complies with section 2 of this chapter is not liable under this chapter.

Sec. 4. The commission may bring suit to enforce this section. If a court enters a judgment for a violation of this chapter, the court shall impose, in addition to any other remedies, a civil penalty as follows:

(1) If a defendant has one (1) judgment for a violation of this chapter committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000).

(2) If a defendant has two (2) unrelated judgments for violations of this chapter committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500).

(3) If a defendant has three (3) unrelated judgments for violations of this chapter committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000).

(4) If a defendant has four (4) unrelated judgments for violations of this chapter committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500).

(5) If a defendant has five (5) or more unrelated judgments

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1 **for violations of this chapter committed during a five (5) year**
2 **period, a civil penalty of ten thousand dollars (\$10,000).**

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